STATEMENT
of

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on behalf of

CONSUMERS UNION
THE CONSUMER FEDERATION OF AMERICA
FREE PRESS

on

DIGITAL FUTURE OF THE UNITED STATES: THE FUTURE OF MUSIC

before the

HOUSE SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET

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Consumers Union (CU),[1] Consumer Federation of America (CFA),[2] and Free Press (FP)[3] believe it is time for Congress to reinvigorate the goals of promoting more competition, high quality/diverse local content, and to expand minority ownership in radio and all other important media that serves the needs of consumers and citizenship in our nation. It is time to take advantage of digital technological breakthroughs and devise incentives to expand local and minority ownership opportunities in radio and other media and to hold the line against the greatest threat to a competitive and diverse media: mergers that concentrate ownership in too few hands.

Today we highlight the most recent wrong-minded radio merger and identify key policy areas for Congress to immediately address in order to promote a radio market that better meets consumers' and citizens' needs.

XM/Sirius Proposed Merger

The proposed merger of the only two satellite subscription radio companies — XM and Sirius Radio — should raise a red flag for both antitrust officials and communications regulators whose job is to promote competition and consumer choice in the marketplace. Not

[1] Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the state of New York to Provide consumers with information, education and counsel about good, services, health and personal finance, and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* with more than 5 million paid circulation, regularly, carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

[2] The Consumer Federation of America is the nation's largest consumer advocacy group, composed of over 280 state and local affiliates representing consumer, senior, citizen, low-income, labor, farm, public power an cooperative organizations, with more than 50 million individual members.

[3] Free Press is a national, nonpartisan organization with over 350,000 members working to increase informed public participation in crucial media and communications policy debates.

only were XM and Sirius prohibited from merging as a condition of getting their licenses to use the public airwaves to deliver their services, the enormous growth of satellite subscription radio service at very substantial monthly charges and consumer equipment costs over just a few years demonstrates that this service is, in fact, a distinct product and could develop into a vibrant competitive market. CFA and CU believe the companies who seek to merge so soon after they began competing and offering consumers innovative new services; so soon after they demonstrated that subscription radio is attractive to consumers and could be much more so with consumer-friendly pricing; and in total disregard of the licensing conditions they accepted in order to use pubic resources, carry an enormous burden to demonstrate why public officials should abandon all normal rules associated with competitive markets and spectrum licensing to allow this merger.

CFA, CU, and Free Press have seen no evidence to support such a showing and therefore believe the Department of Justice (DOJ) and Federal Communications Commission (FCC) should reject this merger unless and until XM and Sirius present clear-cut facts demonstrating how consumers will benefit from less satellite radio competition.

This merger raises the most fundamental issues in antitrust law and poses a substantial threat to consumers and competition. In order to exercise their responsibility under the competition laws, the federal agencies must start from the assumption that the XM-Sirius merger is a merger to monopoly — a merger between the only two firms in the market for national subscription radio service. The product and geographic market characteristics of satellite radio are easily identifiable and quite distinct from other mobile and stationary audio products. It is national, mobile, programmed radio entertainment. The two services deliver and require consumers to purchase huge bundles of well over 100 channels. There are two, and only two, entities providing such a service. The alternatives the companies suggest are substitutes do not possess this set of characteristics and, therefore, cannot be said to compete directly with the service. Entry into this market is restricted by the need to have a license to broadcast at frequencies that enable the service to be provided nationwide. Consumer switching costs are substantial. The original licenses were issued under strict conditions that the two entities are not allowed to merge. There is no circumstance more disturbing from the point of view of the antitrust laws and the Communications Act than a merger within a distinct product market that takes the number of competitors from two to one. Merger to monopoly is antithetical to the competition laws, perhaps the worst offense against the basic principle that competition is the consumer's best friend.

XM and Sirius offer a number of arguments in support of their proposed merger that have not been supported by reliable evidence. We remain unconvinced by the excuses we have heard offered to justify the merger.

They claim that national subscription radio service competes, indirectly, with a variety of partial substitutes. While AM/FM radio, iPods and other music recording and listening devices can offer similar prepackaged music or local signals similar to what satellite radio offers, none of them can offer immediate national programming, including live professional sports games from across the country to listeners across the nation. The track record of intermodal competition disciplining anticompetitive abuse is poor at best. "Bank shot competition" — the claim that partial or poor substitutes that are fundamentally different than the target product serve as competitors — has failed to protect consumers in similar situations. The result of relying on such competition in both merger and regulatory reviews has been rising prices and stagnation.

A perfect example is cable television. In the 1980s, federal policymakers claimed that cable TV competed with over-the-air broadcasting. Based on that understanding, the FCC deregulated cable systems in communities with three or more broadcast signals. Cable rates subsequently skyrocketed. By the late 1980s, the failure of this intermodal competition to discipline cable pricing was so obvious that the FCC proposed to increase the number of over-the-air stations necessary to represent effective competition to six. Seeing the results of this failed policy, Congress re-regulated cable in the early 1990s, and intervened in the market to help DBS satellite compete against cable (another form of intermodal competition).

In the decade after the Telecommunications Act of 1996, which largely deregulated cable rates, intermodal competition between cable and satellite failed to discipline cable rate increases. Average monthly cable bills have doubled since the 1996 Act. In short, intermodal competition from neither over-the-air TV nor from digital satellite distribution disciplined cable rates. The former had more limited channel capacity; the later had greater channel capacity. It did not matter. The empirical evidence from the cable market is clear. Only head-to-head competition delivers clear relief from anti-consumer, anticompetitive pricing.

In the satellite radio service product space, we face a similar configuration of products. Traditional broadcast radio, digital Internet distribution and mobile handheld devices, like iPods, that allow consumers to store and play music from their own collections or from online music sites, are touted as the intermodal competitors that will discipline prices. Yet there are distinct differences in product quality, listener experiences and mode of delivery. The touted competitors are not national, not mobile or not programmed. The growth in subscribership and revenues for Sirius and XM, based on their SEC 10-5 filings, reinforce the uniqueness of satellite radio's product offerings. Between 2005 and 2006, satellite radio subscribership rose from 9.3 million to 13.7 million — a nearly 50 percent increase. And combined revenue grew by nearly 100 percent. These data are not consistent with a market that competes with the growing market for digital listening devices. Experience and careful analysis suggests that the effort to position satellite radio as merely one product option in a broader product market should be rejected.

Consumers in the satellite radio space are afflicted by the very same pricing practices that afflict consumers in the cable space. Not only are prices high, but also the consumer is offered only large bundles of channels over which they have no choice. Consumer choice and consumer sovereignty are denied. In a product market where the marginal production cost of adding subscribers is almost zero, the bundling strategy is largely anti-consumer.[4] This merger promises to make matters worse, with large capacity systems joining to create larger consumer bundles at higher prices. The merging parties have suggested they may provide consumers greater choice over the channels they pay for if the merger is approved. However, it is unclear whether their willingness to hold prices near current levels does anything more than freeze pricing for yesterday's services. It appears that merging parties' promises not to raise prices above the current $12.95/month price for a period of time does not apply to new packages that include the combined services of the two companies – like channel packages that could include Major League Baseball with live NBA basketball and NFL football games. In fact, it is very likely that the "merger benefits" of combining these offerings will require consumers to pay much more than $12.95/month. And it is not clear why prices should not

[4] The marginal production costs are certainly every low, if not zero, but we are told that the marginal transaction costs (i.e. customer acquisition costs) are high. However, it appears that this problem is a function of the bundling strategy. Having set such a high threshold price, the companies are forced to market aggressively to much narrower market segment.

fall far below $12.95/month for existing services if both companies continued to compete against each other and attempted to expand their base of customers.

The suggestion that free, over-the-air radio will discipline pricing abuses after the satellite radio firms merge to monopoly, even though it did not restrain their pricing practices up to now is difficult to take seriously. Claims that existing or emerging distribution systems, like cell phone or Internet radio, will discipline the satellite radio monopolists pricing practices are equally suspect. The iPod has been around for a while, and phenomenally successful, but it sells a very different service and its existence has not disciplined satellite radio pricing practices. There is no reason to believe that it will do a better job if a satellite radio monopoly is allowed to come into existence.

Although the specific product — satellite radio — is new, having been made possible by recent technological advancement, it has achieved a size that establishes it as a distinct product and makes it worthy of public policy attention. Annual revenues exceed $1 billion per year. Abuse of market power in this space could impose a substantial cost on consumers.

Perhaps the most outlandish of all the claims being circulated by the merging parties is the argument that consumers will be better off with a benevolent monopolist than they would be with two competitors. In this ultra-short term view, competition is defined as wasteful, since redundant facilities lie unutilized. The monopolist can serve everyone while using less resources and the monopolist promises not to abuse the market power that would result. Without the stick of competition, however, the cost savings simply will not be passed through to the consumer. Indeed, the increase in market power will allow the post-merger monopoly to raise, rather than lower prices.

The promise of benevolent monopoly is not worth the paper it is written on. The merging parties suggest the merger will increase consumer choice by giving consumers more than the 130 to 170 channels now available to them by consolidating their offerings, omitting the duplicative offerings while retaining highly demanded and niche channels — these are options that consumers can only have to date by subscribing to both services and buying two radios. Yet there is little discussion of the fact that it is the parties' own practices that have denied consumers choice in the past. Despite requirements by the FCC and the terms of their own patent dispute settlement to develop and provide interoperable radios that would have allowed consumers to switch providers without switching equipment, the companies have failed to meet that commitment. Now, we're told dual platform radios are on the cusp of development and will allow consumers to receive both signals simultaneously, easing technological challenges of the merger. But technology that allows consumers to switch services or subscribe to both if they choose should have been available independent of a merger. Yet instead of promoting consumer choice, the merging parties have forced consumers to invest in equipment that works with just one service, and once so invested, are stuck with that choice.

Greater enthusiasm by the merging parties for interoperable and dual platform radios prior to the merger would have facilitated the very choice they now purport to offer consumers under the merger but *without* the necessity of a merger. It's important to point out that in their discussion of consumer choice, the merging parties fail to consider the loss of choice between the two providers as a meaningful one. The two parties have not, as a matter of business practice, offered consumers the most fundamental choice – which channels to pay for. They stuck to a high-priced, high volume bundle, which is anti-competitive and anti-consumer.

Moreover, under the scant details released to date, it remains unclear what additional equipment costs will be imposed on consumers as a result of the merger and whether, if consumers fail to invest in additional equipment, they will enjoy benefits the parties purport to provide to their subscribers. For policymakers inclined to accept the notion that consumers are better off with one rather than two satellite radio providers, we recommend, that the spectrum occupied by one of the current licenses be divested and made available for other consumer services. If all we need is one satellite radio company, why not auction half of the XM/Sirius spectrum for other commercial uses? Surely a free-market auction would enrich the Federal Treasury with plenty of money to compensate satellite radio subscribers for any sunk equipment costs, offer consumers new broadband or other wireless services, and still enable Sirius and XM to combine their best offerings with substantial channel capacity.

Because this is a unique product market, once the competition is eliminated, prices will rise over time. More importantly, the primary driver of innovation and progress in both programming and technology – competition in the market – will be eliminated. Innovation will slow to the pace preferred by the monopolist and consumers will be much worse off in the long run. This is a Faustian bargain that America rejected over a century ago when we affirmed our commitment to competition by enacting the Sherman Act and later the 1934 Communications Act. The short-term benefit of a monopolist who is subject to political oversight is simply not worth the long-term costs of abandoning the competitive engine of economic progress.

Offers of conditions on the mergers should also be taken with a grain of salt. The recent track record of conditions has been abysmal and the satellite radio industry has already proven that it cannot be trusted to live up to conditions imposed on it. The satellite radio licenses were issued subject to the condition that the licensees never merge. Yet here they are asking to be excused from that condition. The licensees promised to offer the public interoperable radios that would work with both systems. Yet, ten years have passed and there is no such interoperability. We are told interoperable radios have been developed but are too costly and thus manufacturers will not install them. Yet we have no ability to verify whether the lack of commercial availability of interoperable radios is due to cost, is the result of technical barriers, or instead is a strategic decision to impose barriers to prevent consumers from switching services. In short, from day one they have failed to meet the conditions of their licenses and the public has suffered as a result.

A satellite radio merger to monopoly is about an avalanche of mergers. There was a key moment a decade ago when the Department of Justice decided that a large monopolist is no worse then two smaller monopolists and allowed the Bell Atlantic-NYNEX merger to go forward. That decision opened the door to a wave of mergers that doomed head-to-head competition in telecommunications. The old telephone monopoly was recreated as two huge geographically distinct monopolies that rarely, if ever, compete.

A satellite radio merger to monopoly will perform a similar bellwether function. If the agencies with oversight adopt a loose definition of products and markets and allow a merger to monopoly on the basis of intermodal competition, then a tsunami of mergers could ripple through the digital space at the worst possible moment. The firms that have declared their undying hostility to the open flow of products in the digital economy (broadcasters, telephone/cellular companies, cable companies), will be empowered to capture and stifle the alternatives, under the premise that every media and telecommunications product competes with all others and that new technologies and services will come along to protect the consumer in any case. That relief, however, will be slow and insufficient because the competitive core of the digital economy will have been damaged and the critical terrain of the digital economy will be controlled by entities that have the same anti-competitive anti-consumer objectives as the merging parties in this case.

Minority Ownership of Radio Stations

As regulators and antitrust authorities are being asked to approve the XM-Sirius merger to monopoly that may give a single licensee greater ability to erect insurmountable barriers to minority and other independent programmers, the FCC has fallen far short of its own mandate to promote diversity in broadcast ownership. The Commission's failings are easily demonstrated by just a brief review of the Commission's recent history in promoting, or failing to promote, diversity of broadcast ownership, and a consideration of the inadequate data on which the Commission bases its diversity policy. Indeed, the FCC has abdicated its responsibility to monitor and foster increased minority and female broadcast ownership. In fact, the Commission cannot account for the actual state of female and minority radio station ownership.

Historically, women and minorities have been under-represented in broadcast ownership due to a host of factors — including the unfortunate fact that some of these licenses were originally awarded decades ago when the nation lived under a segregationist regime. The FCC, beginning with its 1978 Statement of Policy on Minority Ownership of Broadcasting Facilities, has repeatedly pledged to remedy this sorry history.

Congress also has recognized the poor state of female and minority ownership. The Telecommunications Act of 1996 contains specific language aimed at increasing female and minority ownership of broadcast licenses and other important communications mediums. The Act requires the FCC to eliminate "market entry barriers for entrepreneurs and other small businesses" and to do so by "favoring diversity of media voices." The Act also directs the Commission when awarding licenses to avoid "excessive concentration of licenses" by "disseminating licenses among a wide variety of applicants, including small businesses... and businesses owned by members of minority groups and women."

The FCC initially appeared to take this mandate seriously. In 1997, the Commission completed a proceeding, as required by Section 257 of the 1996 Act, which identified barriers to entry for small businesses (which has been interpreted to include minority- and female-owned entities) and set forth the agency's plan for eliminating these barriers. Unfortunately, subsequent triennial reports have lacked substance.

In 1998, the Commission further demonstrated its seriousness by taking a crucial first step to determine the actual state of female and minority ownership of broadcast radio and television stations. That year, the FCC began requiring all licensees of full-power commercial stations to report the gender and race/ethnicity of all owners with an attributable interest in the license. In the Form 323 Report and Order, the Commission stated:

> *Our revised Annual Ownership Report form will provide us with annual information on the state and progress of minority and female ownership and enable both Congress and the Commission to assess the need for, and success of, programs to foster opportunities for minorities and females to own broadcast facilities.*

Other than this monitoring effort, the FCC has done very little to promote female and minority broadcast ownership (and the follow-up on this monitoring has been abysmal). In its 1999 Order that allowed television duopolies, the Commission paid lip-service to concerns about the policy change's effect on minority and female ownership, but still went forward with rule changes that allowed increased market concentration. In 2004, the Commission sought input into how it could better implement Section 257 of the 1996 Act. But this proceeding remains open, and the Commission has shown no sign of interest in completing this important matter.

Now, the 2006 Further Notice seeks public comment on the issue of minority and female ownership. But before considering the potential effects of policy changes on female/minority ownership, we must first know the current state of ownership and evaluate the effects of previous policy changes. No one should be in a better position to answer these questions than the Commission itself. The FCC possesses gender and race/ethnicity information on every single broadcast entity and knows exactly when licenses changed hands.

In reality, the FCC has no accurate picture of the current state of female and minority ownership, and shows no sign of taking the matter seriously. Though the Commission has gathered gender/race/ethnicity data for the past seven years, it has shown little interest in the responsible dissemination of the information contained within the Form 323 filings.

This lack of interest or concern is underscored by the FCC's own Form 323 summary reports. Station owners began reporting gender/race/ethnicity information in 1999, and the FCC released its first "summary report" in January 2003 (for reporting in 2001). A second summary followed in 2004 (for reporting in 2003). The most recent report was issued in June

2006 (for the 2004-2005 period). However, calling these publications “summary reports” is somewhat misleading, as they are merely a listing of each minority or female-owned station's Form 323 response and not aggregated in any manner. No information on the stations that are not owned by women or minorities is given.

A 2006 examination by Derek Turner, Research Director at Free Press, revealed significant problems in FCC’s minority ownership data collection and reporting.[5] Some station owners listed in the 2003 summary are missing from the 2004 report but reappear in the 2006 summary, despite the fact that ownership had not changed during the interim period. Certain stations have ownership interests that add up to greater than 100 percent. In some instances, the type of station facility (AM, FM or TV) is not specified. In addition, some stations known to be minority owned are not listed in the report. For example, not a single station owned by Radio One is listed, even though the company is the largest minority-owned radio broadcaster in the United States. Stations owned by Granite Broadcasting, the largest minority-owned television broadcaster, are also missing from the FCC’s summary reports.

Turner found little FCC oversight of Form 323 filings and the summary reports produced from them. This lack of concern is made evident not only by the poor quality of the summary reports, but by the significant number of improperly filed forms. Station owners who listed themselves as one race in a certain year are listed as a completely different race in later years; race and gender information is left blank; names are misspelled; attribution of ownership in other stations is not listed as required; and some stations fail to file every two years as required by law.

[5] S. Derek Turner, *Out of the Picture: Minority & Female TV Station Ownership in the United States*, Free Press, Consumers Union, Consumer Federation of America, October, 2006.

In response to a recent FOIA request from Georgetown University, the FCC released additional ownership studies it conducted but chose not to release. Two of these studies looked at the issue of female and minority ownership, but just like the public released Form 323 Summaries, these reports are also badly flawed, missing many minority-owned stations. This once again demonstrates that the Commission has no grasp over its own data.

As inadequate as the data are for television station ownership, the situation is worse for radio where the Commission is obligated to monitor some 11,000 radio stations — ten times the number of television stations. Indeed, some radio station owners simply do not file the required forms and face no retribution from the Commission for not doing so.

As a result, the Commission has almost no basis on which to evaluate the state of minority and female ownership in radio, the degree to which it is meeting its diversity mandate, and how allowing further consolidation under the pending ownership proceeding and through the XM-Sirius merger will impede its ability to remedy under-representation by women and minority owners. Before Congress signs off on a resolution of either issue, it should require the FCC to collect, analyze and report methodologically sound data on the state of minority ownership of all broadcast licensees and develop a cohesive plan to foster greater minority ownership. And Congress must also consider and pass legislation that will foster greater diversity of station ownership through consideration of legislative initiatives such as tax credits and tools to enhance minority access to capital as well as through improvements to FCC's spectrum auction processes.

Low-power FM Radio

Consumers not only benefit from competition in satellite radio, they benefit when there are many diverse sources of local news and information available. Satellite radio does not now, nor can it by law, offer local news and information. And radio consolidation, brought about after the 1996 Telecommunications Act's elimination of national radio ownership caps and effective elimination of meaningful local market caps, has disserved the public by homogenizing listening formats, reducing opportunities for independent artists to be heard and eliminating virtually all meaningful local news and information coverage from the radio airwaves. As the now public 2003 FCC radio ownership study demonstrates, between 1996 and 2003, the number of radio owners declined by 35 percent due to mergers between existing owners.[6] During that time period, the largest radio conglomerates grew even larger: Clear Channel increased its national holdings from 65 to more than 1,200 stations while Cumulus Broadcasting grew its properties from 65 to more than 250.[7] Though the potential sale of some Clear Channel properties may change that picture somewhat, the damage to diversity of content and ownership has been done.

As the FCC has largely abdicated its responsibilities to monitor and report on minority ownership, it has taken steps to expand diversity in radio through low power FM radio. The Commission's actions are laudable, but Congress must now finish the job. Low power FM (LPFM) radio stations broadcast at 100 watts or less, serving neighborhoods and towns over 5 to 15 miles. Licensed to nonprofits such as churches and schools, these stations provide local content long missing from the radio dial in a badly consolidated and homogenized market.

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[6] Review of the Radio Industry, Federal Communications Commission, 2003, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-267479A1.pdf.

[7] Id.

There are nearly 800 LPFM stations on the air today, serving communities across the country. They provide critical local news and information service that larger broadcasters have largely abandoned. LPFM stations cover the school board and city council meetings, host debates with political candidates and broadcast in diverse languages. They air music that listeners can't hear on the national formats of the commercial giants. They air local musicians and cover other local arts.

As highlighted in testimony submitted by the Prometheus Radio Project for this hearing and in a subcommittee hearing last year, a low power station in Bay St. Louis, Mississippi filled the local disaster and emergency coverage gap during Hurricane Katrina, left open by radio stations serving larger markets. Less dramatic but equally important examples of the contributions LPFM stations make to local communities abound. For example, the FCC learned about the important service of many low power FM radio stations when Lucas Benitez, as well as dozens of other low power FM broadcasters and supporters, spoke to all five commissioners on the 5th anniversary of low power FM radio, at the FCC, on February 8th, 2005.[8] Benitez, a founder of Radio Consciencia, or WCTI-LP-107.9 FM, is a pioneer of a low power FM radio station licensed to the farmworkers of the Coalition of Immokalee Workers in Southwest Florida. The farmworkers of this area often speak Spanish, which makes passing on emergency information a challenge for the full power broadcasters of the area during hurricane season. Radio Consciencia broadcasts regularly a two-hour weekend show in Mam and Q'anjob'al, the indigenous languages of the communities' thousands of farmworkers. Benitez described the unique service low power FM was prepared

[8] Statement of Lucas Benitez, Broadcaster, WCIW-LP, Immokalee, FL, Interfaith Action of Southwest Florida, Inc... before the Federal Communications Commission's Low Power FM Forum, February 8, 2005

to provide for diverse and non-English speaking communities during hurricane season to the Palm Beach Post in June of 2005.

Despite the powerful advantages of LPFM, when it was first starting up, the National Association of Broadcasters — making an argument now familiar to anyone seeking to make better public use of the abundant spectrum lying fallow in broadcast bands — claimed that LPFM stations might interfere with full power radio stations. In November 2000, Congress told the FCC to go forward with LPFM licenses in only rural areas, and to hire an outside contractor to test the incumbent broadcasters' interference hypothesis once and for all. The July 2003 results of that study, conducted by the MITRE Corporation, proved that there was plenty of room for thousands more LPFM radio stations on America's airwaves.

On February 20, 2004, after examining the study, the FCC recommended that Congress restore the Commission's authority so that it could give out more LPFM licenses. In response to those findings, several bills were introduced in the 109th Congress that would have facilitated greater LPFM licensing authority — S. 312, the Local Community Radio Act of 2005 introduced by Senators McCain, Cantwell and Leahy and H.R. 3731, the Enhance and Protect Local Community Radio Act, introduced by Congresswoman Slaughter. Demonstrating the strong support for LPFM, S.312 was included as an amendment to Senate omnibus telecommunications legislation last year by a 14-7 vote. Unfortunately, past Congresses have not brought the bill to a vote before either chamber.

It is time for Congress to act. Local, terrestrial radio is vital to American communities and with consolidation brought to the public by the 1996 Telecommunications Act, commercial radio no longer serves the public as it should. When FCC Chairman Martin spoke at the Commission's recent media ownership hearing in Harrisburg, Pennsylvania, he noted that LPFM is a "lower cost opportunity for more new voices to get into the local radio market."[9] Now, as Congress, the FCC and antitrust authorities consider the implications of consolidation in satellite and terrestrial radio, it must ensure that LPFM radio has the opportunity to expand its ability to serve the public.

The American people trust the government with the management and licensing of the airwaves the public owns. And government — both Congress and the FCC — has an obligation to meet that public trust by ensuring that localism forms the cornerstone of all of its actions regarding the public airwaves. Expanding the availability of low power FM is a critical component in serving the public interest. It is a long overdue and powerful tool to mitigate some of the damage done by media consolidation.

Conclusion

The XM-Sirius merger simply cannot be considered in a vacuum, independent of the deplorable state of competition in radio, the needs of radio listeners and communities for sources of diverse local news and information, and the significant barriers facing independent artists and commentators and would-be minority station owners. Congress should put a halt to the pending FCC media ownership proceeding until significant questions about the Commission's action or lack thereof to assess the state of, and promote greater, minority ownership are answered and until Congress evaluates the impacts of its own wrong-headed policy to allow greater radio consolidation. Congress should also tell the FCC and antitrust authorities to put the brakes on the proposed XM-Sirius merger unless and until significant

[9] Statement of Kevin Martin, Chairman, Federal Communications Commission, before Official Media Ownership Hearing, February 23, 2007, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-270765A1.doc.

questions on competition and consumer impacts are fully addressed and satisfactorily answered. And, in the meantime, Congress should act to create new opportunities for LPFM radio to fill the yawning gaps in the local, diverse news and information it created when it allowed unprecedented consolidation in radio ownership. Only through a reinvigorated commitment to the goals of promoting more competition, high quality and diverse local content, and expansion of minority ownership in radio can Congress serve the needs of consumers and the public. It is time to take advantage of digital technological breakthroughs and devise incentives to expand local and minority ownership opportunities in radio and other media and to hold the line against the greatest threat to a competitive and diverse media: mergers that concentrate ownership in too few hands.